

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 783 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULGANI @ GANIDHOBI M SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr.Thakkar for Advocate
Ms. Suman Pahwa on behalf of the petitioner and learned
A.G.P. Mr. D.P. Joshi for the respondents nos.1,2 and
3.

1. The detention order dated 24-1-1999 passed by the
respondent no.2-Commissioner of Police, Vadodara City

against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of " PASA", copy of which is produced at Annexure "B" indicate that four Prohibition Cases are registered against the petitioner at different police stations of Baroda and in each case countrymade liquor has been seized from the possession of the petitioner and the said cases are pending for trial. Furthermore, three witnesses on assurance of their anonymity have supplied information about the bootlegging activity of the petitioner which pertains to the incidents dated 22-11-1998, 24-11-1998 and 5-11-1998 respectively.

3. That in consideration of the said material, the respondent no.2 has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity which adversely affects the maintenance of public order, and hence, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that vide representation dated 26th January, 1999, the petitioner had claimed report of chemical analyser or FSL report in respect to material seized in the case registered against him. That the respondents have supplied the same on 22nd September, 1999. Thus, on account of the said delay on the part of the respondents, the petitioner was prevented from making effective representation as provided under Article 22(5) of the Constitution which has rendered the continued detention of the petitioner illegal.

5. Learned A.G.P. Mr. D.P. Joshi having relied on the affidavit sworn by Mr. I.J. Mahapatra-the respondent no.2 has tried to salvage the issue by contending that the FSL report was not available with the detaining authority when the impugned order was passed, however, on receipt of the same, the same has been provided. The explanation though given in the affidavit filed by the detaining authority cannot be accepted for the simple reason that Article 22(5) of the Constitution guarantees a right to the citizen that representation made by him shall be considered as soon as possible. In the instant case, there is no explanation as to delay in supply of

the vital document like report of chemical analyser/FSL in respect of materials alleged to be countrymade liquor seized from the possession of the petitioner for a period of about eight months. The said delay on the part of the respondents amount to a breach of Constitutional imperative rendering the continued detention of the petitioner illegal.

6. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

7. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 24-1-1999 passed by the respondent no.2-Police Commissioner, Vadodara City against the petitioner is hereby quashed and set aside. The petitioner-detenu-Abdulgani alias Ganidhobi Mahamed Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

stanley-akt.